

Internal Revenue Service

Number: **201322002**

Release Date: 5/31/2013

Index Numbers: 1502.13-01, 9100.22-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-110290-12

Date:

February 22, 2013

LEGEND

Current Parent =

Old Common Parent =

Target =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Tax Professionals =

Dear _____ :

This letter responds to a letter from your authorized representative dated March 7, 2012, requesting an extension of time under §§301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election under §1.1502-13(l)(3) (hereinafter referred to as the "Election"). The material information submitted in that request and in subsequent correspondence is summarized below.

In July 1995, the Internal Revenue Service and Treasury Department published new intercompany transaction regulations under §1.1502-13 governing the treatment of transactions between members of a consolidated group. The regulations are generally effective for transactions occurring in taxable years beginning on or after July 12, 1995. Section 1.1502-13(l)(1).

Section 1.1502-13(l)(3) of the regulations permitted taxpayers to elect to have the regulations apply to certain stock elimination transactions (i.e., those transactions described in §1.1502-13(l)(3)(ii)) that occurred in a year to which prior law would otherwise apply. To make the election §1.1502-13(l)(3), taxpayers were required to include a statement making the election with their original return for the taxable year including July 12, 1995. However, for various reasons, Old Common Parent did not make an election under §1.1502-13(l)(3) for its consolidated group ("Old Group") for the taxable year including July 12, 1995. On or before Date 4 (which was after the due date for the Election), it was discovered that no Election had been made by Old Common Parent with respect to Old Group.

As a result of a corporate restructuring, Old Group terminated on Date 1. On Date 2, Target was accepted by the Service as the substitute agent for Old Group. "New Group" which includes Target came into existence after the termination of Old Group. Current Parent is now the common parent of New Group. As of Date 3, Old Group had no deferred intercompany losses with respect to member stock that had not been taken into account.

Target has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under §6662.

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a

regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., §1.1502-13(l)(3)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Target to file the Election, provided Target and Old Common Parent acted reasonably and in good faith, the requirements of §§301.9100-1 and 3001.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Target and Tax Professionals explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Old Common Parent reasonably relied on a qualified tax professional who failed to make, or advise Old Common Parent to make, the Election and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Target and Old Common Parent acted reasonably and in good faith, the requirements of §301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under §301.9100-3, until 60 days from the date on this letter, for Target to file the Election on behalf of Old Group. The election must be attached to an amended return for the period including July 12, 1995.

The above extension of time is conditioned on Old Group's and New Group's tax liability, if any, not being lower in the aggregate for all years to which the Election applies than it would have been if the Election had been timely made (taking into account the time value of money). We express no opinion as to Old Group's or New Group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Old Group qualifies substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Internal Revenue Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in this letter.

For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made under penalty of perjury by Target and Tax Professionals. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: